



FILED

November 1, 2014

**TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD**

**STATE OF TENNESSEE
DIVISION OF WORKERS' COMPENSATION**

WORKERS' COMPENSATION APPEALS BOARD

IN RE: PRACTICES AND PROCEDURES

For the purpose of establishing uniform practices and procedures before the Workers' Compensation Appeals Board, the Board hereby adopts the following Practice and Procedure Guidelines:

SECTION 1: SCOPE

1.1 Applicability

The Practice and Procedure Guidelines of the Tennessee Workers' Compensation Appeals Board ("the Board") are effective as of November 1, 2014 and shall pertain to all matters on appeal before the Board. Any practices and procedures as outlined below which are deemed to be in conflict with any statute, administrative regulation, or controlling case law are superseded by any such law.

1.2 Construction

These Practice and Procedure Guidelines shall be construed to secure a just and speedy determination of all matters at issue during the pendency of an appeal. The Board may suspend any of these guidelines during the pendency of any appeal if justice so requires.

SECTION 2: REPRESENTATION AND CONDUCT

2.1 Representation By Counsel

In any appeal pending before the Board, any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice in accordance with Tennessee Supreme Court Rule 19. Any party that is a natural person may represent himself or herself in any proceeding before the Board. Any corporation or other artificial person must be represented by counsel in all proceedings before the Board.

2.2 Signatures

Any brief, motion, or other writing submitted to the Board must be signed by an attorney who has entered an appearance in the case or by an individual representing himself or herself in accordance with paragraph 2.1.

2.3 Conduct of Parties and Attorneys

At all times during the pendency of an appeal before the Board, all parties and their counsel shall conduct themselves in a manner respectful to the Judges of the Board and all other parties and their counsel.

2.4 Written Materials

All briefs, motions, or other writings submitted to the Board shall contain language respectful to Judges, all parties, and their counsel. Any brief, motion or other writing which contains language disrespectful of any court or judge may be stricken or disregarded by the Board.

2.5 Ex Parte Communications

All briefs, motions or other writings shall be submitted to the Clerk of the Workers' Compensation Appeals Board for filing. Attorneys and/or parties are prohibited from contacting any Appeals Board Judge in any manner during the pendency of an appeal. An appeal is pending from the date the notice of appeal is filed until the time a subsequent final order or judgment is entered in the case, or time for appeal of any subsequent final order or judgment has expired, whichever is later.

SECTION 3: RECORD ON APPEAL

3.1 Content of the Record

The record on appeal shall consist of: (1) all papers filed in the trial court except as hereafter provided; (2) exhibits; (3) a transcript or statement of the evidence, if any; (4) briefs or position statements filed before or after the filing of the notice of appeal; and (6) any other document(s) designated by a party and approved by the Court of Workers' Compensation Claims pertaining to the issues decided in that court.

3.2 Excluded From the Record

The following papers filed in the Court of Workers' Compensation Claims are excluded from the record: (1) subpoenas or summonses for any party or witness; (2) all papers relating to discovery unless admitted into evidence; and (3) notices, motions and orders relating thereto, unless pertinent to an issue decided by the Court of Workers' Compensation Claims.

3.3 Duplication

No paper shall be included in the record more than once.

3.4 Transcript or Statement of Evidence in Interlocutory Appeal

The parties, having the responsibility of ensuring a complete record on appeal, may request from the Clerk of the Court of Workers' Compensation Claims the audio recording of the hearing for the purpose of having a transcript prepared by a licensed court reporter and filing it with the Clerk of the Court of Workers' Compensation Claims within ten calendar

days of the filing of the notice of appeal. Alternatively, the parties may file a statement of the evidence within ten calendar days of the filing of the notice of appeal. The statement of the evidence must be approved by the judge before the record is submitted to the Clerk of the Appeals Board.

3.5 Correction or Modification of the Record

Any differences regarding whether the record accurately discloses what occurred in the Court of Workers' Compensation Claims shall be submitted to and settled by the Court of Workers' Compensation Claims. If necessary, the Appeals Board may direct that a supplemental record be submitted to the Board.

SECTION 4: EXTENSIONS OF TIME AND REQUESTS FOR CONTINUANCE

4.1 Motions for Extension of Time

Any motion seeking to extend any time limit during the pendency of an appeal must be filed prior to the expiration of the applicable time limit. The motion may be decided by one Appeals Board Judge. An order will be issued as soon as practicable after the motion is filed.

4.2 Good Cause and Exceptional Circumstances

Any motion seeking to extend any time limit during the pendency of an appeal must show good cause in support of the motion sufficient to establish exceptional circumstances. The existence of good cause and/or exceptional circumstances shall be determined in the discretion of the Appeals Board.

SECTION 5: BRIEFS

5.1 Elements of the Briefs

Any brief pertaining to the appeal of a compensation order shall contain: (1) a statement of the facts, summarizing the facts of the case from the evidence admitted at trial; (2) a statement of the case, summarizing the disposition of the case by the Court of Workers' Compensation Claims; (3) a statement of the issue(s) presented for review; and (4) an argument, citing appropriate statutes, case law, or other authority. The argument section is limited to a maximum of fifteen (15) pages, unless changed by the Board upon timely motion. The brief shall include a table of contents, a table of authorities, and a certificate of service. All briefs shall be signed by the attorney of record or the pro se party filing the brief.

5.2 Cover Page

Briefs pertaining to the appeal of a compensation order shall include a cover page setting forth: (1) the style of the case; (2) the designation "Brief of the Appellant" or "Brief of the Appellee;" and (3) the name and address of the attorney of record or pro se party filing the brief.

5.3 Position Statements in Interlocutory Appeals

If the appellant elects to file a position statement in support of an interlocutory appeal, the appellant shall file such position statement with the Clerk of the Court of Workers' Compensation Claims within three business days of the filing of the notice of appeal, specifying the issues presented for review and including any argument in support thereof. If the appellee elects to file a response in opposition to the interlocutory appeal, appellee shall do so within three business days of the filing of the appellant's position statement.

5.4 Motions

Any motion seeking to expand the page limit of a brief must be filed at least five (5) business days prior to the date the brief is due. The motion may be decided by one Appeals Board Judge. An order will be issued as soon as practicable after the motion is filed.

5.5 Issues Waived:

Issues or arguments not raised in the Court of Workers' Compensation Claims will be deemed waived on appeal.

SECTION 6: HEARINGS

6.1 Reserved.

SECTION 7: RECORDS

7.1 Maintenance of the Record on Appeal

All pleadings, forms, transcripts, depositions, briefs, motions, or other writings and all exhibits, shall be maintained by the Clerk of the Workers' Compensation Appeals Board during the pendency of the appeal. No persons except the Clerk, Deputy Clerks and/or the Judges of the Appeals Board shall be allowed access to such materials maintained during the pendency of the appeal. If it is necessary for any other persons to examine any record during the pendency of the appeal, the Clerk shall obtain that record for examination by any such person and shall regain custody of that record upon completion of the examination. No part of the record shall be taken from the physical location of the Division unless otherwise ordered by the Board.

7.2 Disposition of the Record on Appeal.

After final determination of any case, the parties shall have one hundred eighty (180) days after entry of the decision on appeal to withdraw exhibits or depositions. The Clerk may destroy or dispose of any exhibits or depositions not so withdrawn in accordance with the Records Disposition Authorization of the Division.

SECTION 8: RECUSAL

8.1 Properly Supported Motion

Any party seeking recusal of a Judge on the Appeals Board shall do so as soon as practicable by written motion supported by an affidavit under oath or a declaration under penalty of perjury on personal knowledge and by other appropriate materials. The motion shall state, with specificity, all factual and legal grounds supporting disqualification of the Judge and shall affirmatively state that it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

8.2. Disposition

Upon the filing of a motion seeking recusal, the Judge in question shall act promptly by written order and either grant or deny the motion. If the motion is denied, the Judge shall state in the order the grounds upon which he or she denies the motion.

SECTION 9: NOTICE TO ATTORNEY GENERAL WHEN VALIDITY OF STATUTE, RULE OR REGULATION IS QUESTIONED

9.1 Notice

When the validity of a statute or an administrative rule or regulation is questioned in any appeal, the party raising such question shall serve notice on the Attorney General.

9.2 Response Permitted

The Attorney General is entitled to respond by filing a brief within the time permitted by the Board.

9.3 Decision on Appeal

Except by order of the Board, in the absence of the required notice, the Board will not dispose of an appeal until notice has been given and the Attorney General has been given an opportunity to respond as determined by the Board.

SECTION 10: SUBSTITUTION OF PARTIES; SUBSTITUTION OR WITHDRAWAL OF ATTORNEYS

10.1 Substitution After Appeal is Filed

If substitution of a party is necessary due to death or other reason following the filing of the notice of appeal, a motion for substitution may be made by any party or by the successor or representative of the deceased party.

10.2 Death of Party Before Appeal is Filed

If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal shall be filed and served by the deceased party's personal representative or, if there is no such personal representative, by the deceased party's counsel of record. After the notice of appeal is filed, substitution shall be effected in accordance with this section.

10.3 Substitution or Withdrawal of Attorney

Any substitution or withdrawal of any attorney shall comply with Rule 0800-02-21-.05(3) of the administrative rules and regulations of the Division of Workers' Compensation.

IT IS SO ORDERED.

ENTERED THIS 1ST DAY OF NOVEMBER 2014.

FOR THE APPEALS BOARD:

Marshall L. Davidson, III
MARSHALL L. DAVIDSON, III
Presiding Judge